ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. RODNEY D. ZEANE,

Relator,

v.

JUDGE ALAN TRAVIS,

Respondent.

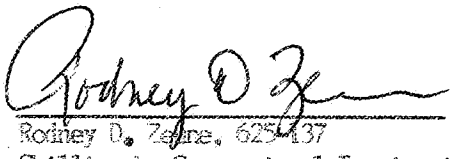
Case No. 2013-09 59

Original Action in Procedendo

MEMORANDUM IN OPPOSITION

Here comes Relator, Rodney D. Zeane, to respectfully request that this Court deny Respondent's Motion to Dismiss and determine that said motion should be construed as a motion for summary judgment pursuant to Civ. R. 12(B). Respondent has presented matters outside the pleadings in his motion to dismiss for failure to state a claim, therefore, the motion should be treated as a motion for summary judgment. Pursuant to S. Ct. R. 10.4(B) neither party can file a motion for summary judgment in an original action. If this Court were to determine that Respondent's motion to dismiss should be treated as a motion for summary judgment, Respondent's motion is barred from review and should be denied. Otherwise, Relator opposes Respondent's motion and sets forth his reasons in the following Memorandum.

Respectfully submitted,



Rodney D. Zeane, 625-137
Chillicothe Correctional Institution
P.O. Box 5500
Chillicothe, Ohio 45601

FILED
JUL 10 2013
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
JUL 10 2013
CLERK OF COURT
SUPREME COURT OF OHIO

MEMORANDUM IN SUPPORT

The frist issue that I address is Respondent's claim that I failed to comply with R.C. 2969.25. However, that argument fails. Respondent claims that the statement of my inmate account was not certified by the institutional cashier. If the Court were to reference page 1, of the cashier's statement, they would find the certification of Susan D. Pierce, cashier. Respondent's argument fails and is inappropriate. Respondent further claims that I did not properly file an affidavit of indigency pursuant to statute by failing to state all cash and things of value owned at the time of filing. I included a statement that I have no funds or assests of any kind, therefore, I satisfied R.C. 2969.25(C) because I have no cash or things of value to list. For this reason, the Court should decided that Respondent's request for dismissal should be denied.

Secondly, Respondent claims that I failed to satify R.C. 2969.25(A) for failing to include Huntington Natl. Bank v. Zeune, 10th Dist No. 08AP-1020, 2009-Ohio-3482 in my list of civil actions filed in the last years as an inmate. The statute is very clear that list should include civil cases that an "inmate" filed. I was not an inmate when the above action was filed, therfore, I was not required to list the Huntington Bank. Moreover, the failure to state a civil case is not grounds for dismissal pursuant to R.C. 2969.24(A). R.C. 2969.25 is in place for the courts to determine whether an inmate's civil actions are frivolous or malicious and that is not the case here. Therefore, Respondent's request for dimissal should be denied. I will amend my affidavit of civil actions in a seperate filing in case the Court would determine that somehow Respondent was pejudiced by my not listing an appeal filed by a non-inmate.

Oddly enough, I have filed other actions againt Respondent (the trial court) and there has ever been a argument that I failed to provide a proper cashier statement or that I list the Huntington Bank case. These are new arguments that have absolutely no merit and should be disregarded by the Court. This Court has excepted my past filings, and have granted an Writ of Procedendo against Respondent using the same statements and certifications.

Next, Respondent failed to answer my complaint and chose to submit a motion to dimiss for my failing to state a claim of which I am entitled to relief. This Court already determined in State Ex Rel. Zeune v. Bender, 12-1806 that the court's failure to proceed to judgment for over eighteen months warranted the issuance of a Writ in Procedendo. In the case at hand, issues are much more severe and Respondent argued most of the same issues. Therefore, the Court should determine that the trial court must comply with statutes and proceed to judgment in accordance with the law.

More specific to this case, Respondent has failed to ever pronounce judgment against me. Respondent could have presented a answer and denied my claim. However, the trial court's stance is very clear and there will be no proceeding to judgment unless forced by the Court. In my original filing, I included a copy of my indictment and the jury verdict form. Through counsel, I was informed that the trial court would not proceed to judgment and sentence me to complicity and, therefore, the trial court was not inclined to pronounce the jury's verdict pursuant to R.C. 2929.19. I was informed that because there was no one, besides myself charged with the offense of trafficking in cocaine, I could not be found guilty of complicity in that same offense. The prosecutor, until opening arguments, always stated that I, alone, sold cocaine to Ayman Musleh. However, Musleh and I purchased cocaine from Rayshon Alexander. Alexander was never arrested, never made a statement, never claimed I assisted him in a sale, never testified to the Grand Jury, and never testified at trial, therefore the state never statisfied R.C. 2923.03(D), accomplice testimony and corroboration. Since I had no proven accomplice, the trial court refused to sentence me to complicity or any charge for that matter. I never even knew the state was claiming I was complicit to Alexander because there was no information provided about Alexander or was the fact that I assisted him in a sale was never presented.

At this point, I have no judgment to appeal. The jury's verdict was not included in my judgment entry. Pursuant to State v. Fischer, 128 Ohio St. 3d 92, 2010, Ohio 6238, 942 N.E. 2d 332, my judgment is void. In Fischer, this Court decided a void judgment can be challenged anywhere at any time. Therefore, Respondent's motion to dismiss should not survive a void judgment. I hereby request that this Court take Judicial Notice of its holding in Stave v. Fisher.

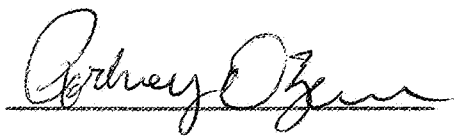
I further request that the Court take judicail notice pursuant to R.C. 2941.12; Pleading of a Statute. In pleading a statute or right derived therefrom it is suffient to refer to the statute by its title, or in any other manner which identies the statute. The court must then take judicial notice of such statute. I hereby request that the Court take NOTICE of R.C. 2923.02, Complicity and determine pursuant to Section (D) of the statute requires accomplice testimony to sustain a conviction under Ohio law. I further request that the Court take NOTICE of R.C. 2929.19, Sentencing Hearing, and determine that pursuant to (A)(1) of the statute, the trial court shall pronounce the jury's verdict at the sentencing hearing.

A Writ of Procedendo is proper where the court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. State ex rel. Doe v. Tracy (1989), 51 Ohio App. 3D 198, 200; State ex rel. Wallace v. Tyack (1984), 13 3d 4. Here, the trial court has refused to proceed to judgment and sentence me in case No. 08CR 4919 for over thirty-five (35) months.

Wherefore, I have a claim to which I am entitled to relief. This Court has ruled that procedendo is proper when a court fails to proceed to judgment. This Court should also determine that my judgentnis void because one cannot be complicit to a charge where he is the only one charged and where there is no accomplice testimony. I have included transcripts where the State refiers to Rayshon Alexander as the principle offender (Tr. 361), where the State admits Alexander was not arrested and even make claim that they do not even know Alexander, however they say I am his accomplice (Tr. 297), and the list of witness that testified, where Alexander is not listed or was he present to testify. The Court should also determine that my judgment is viod for failure to comply with R.C. 2929.19 and Crim. R. 32(C). The trial court failed to pronounce and jounalize the jury's verdict.

Therefore, I respectfully request that the Court issue a Writ of Procedendo ordering Respondent to proceed to judgment in csae No. 00CR-4919 and pronounce the jury's verdict. Pursuant to State v. Fischer, my sentence is void. In State v. Wickline (1990), 50 Ohio St. 3d 114, 552 N.E. 2d 913, this Court determined that "at the very least" an accomplice must be a person indicted for the crime of complicity. Here, I am somehow complict to myself in a sale where I purchased cocaine; confusing. Furthermore, I have presented the aggregate of operative facts giving rise to a right enforceable by the Court. Respondent did not meet his minimal requirement of pronouncing or recordong the jury's verdict, which is guaranteed by the Due Process Clause; the right to a judgment that can be properly appealed and is not contrary to law.

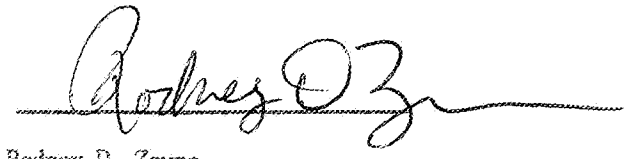
Respectfully submitted,



Rodney D. Zeune

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum in Opposition was sent to Respondent's counsel, Sean T. McCullough by the way of regular mail, at 373 South High Street, Columbus, Ohio 43215, on this 8th day of July, 2013.



Rodney D. Zeune

INDEX TO WITNESSES


| Plaintiff's | Direct | Cross | Redirect | Recross |
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| Ayman Musleh | 25 | 107 | 167 | 175 |
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| Russ Moore | 182 | 217 | 241 | |
| Matthew Dailey | 248 | 289 | | |
| Jeffrey Jacobs | 302 | 307 | | |
| Craig Feeney | 310 | | | |

1 A. Not when I was there, no.

2 Q. Okay. Do you know if that ever took

3 place?

4 A. No idea.

5 Q. Okay. To your knowledge, has Rayshon

6 Alexander ever been charged with selling drugs on

7 March fifth, two-thousand-nine?

8 A. No. I don't know Rayshon Alexander.

9 Q. All right. Who took custody of the

10 cocaine after it was all over? What jurisdiction?

11 A. We did, Mount Vernon.

12 - - -

13 Thereupon, the previously marked State's

14 Exhibit Letter L, DEA Paperwork, was presented for

15 purposes of identification.

16 - - -

17 (BY MR. KRAPENC).

18 Q. Let me show you State's Exhibit L. I'm

19 going to show you the second page of it. And

20 on box seven, this is taken into custody, and

21 it's described as twenty-seven point two grams

22 of cocaine?

23 A. Okay.

24 Q. That was commonly referred to on the

25 property slip?

1 there was, a what we call a principal offender
2 here. And I can't even remember the name.
3 Rayshon Alexander, somebody. Yeah, it was
4 Rayshon's picture was picked out. I can tell
5 you it wasn't him, doesn't matter as long as
6 there's a principal offender, that the sale
7 took place. That's what we have here. Okay.
8 So, is he guilty as an accomplice?
9 Absolutely he is. Because it doesn't take
10 much, doesn't take much, really.
11 I honed in in opening with the talk
12 which is the aider and abetter. And actually
13 to be correct, this at the top applies both to
14 possibilites. All kinds of alternatives you'll
15 hear and you'll read in these jury instructions.
16 Lots of and/or. When you see and/or means you
17 can find one possibility out of say four, you can
18 find them all. It's and/or for both possibilities.
19 The Defendant had to have the same
20 intent. All right. Had to have the same intent,
21 but Rayshon or whoever this other person was that
22 walked out and delivered the ounce of cocaine in
23 his hand, okay, was he trying to help his friend,
24 Ayman, get sold coke, sure. Sure he was. And had
25 he just got in that car and rode along with Ayman,